

STATE EMPLOYMENT
RELATIONS BOARD
FACT-FINDING TRIBUNAL OF THE

STATE EMPLOYMENT RELATIONS BOARD FEB 10 A 10:59

IN THE MATTER OF:

**FRATERNAL ORDER OF POLICE,
OHIO LABOR COUNCIL, INC.
Employee Organization,**

and

**CITY OF ZANESVILLE,
Employer.**

REPORT OF FACT FINDER

CASE NUMBER:

05-MED-07-0744

DATES OF HEARING: January 18, 2006

PLACE OF HEARING: Zanesville, Ohio

FACT FINDER: Charles W. Kohler

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Frank L. Arnold, Staff Representative

FOR THE EMPLOYER:

Dale Raines, Budget and Finance Director

STATE EMPLOYMENT
RELATIONS BOARD
2006 FEB 10 A 11:00

PROCEDURAL BACKGROUND

This matter involves the negotiation of a successor collective bargaining agreement between the City of Zanesville ("the City" or "Zanesville") and the Fraternal Order of Police, Ohio Labor Council, Inc. ("FOP"). The previous agreement between the parties expired on December 10, 2005. The collective bargaining agreement covers one bargaining unit. The unit consists of all patrol officers and detectives.

On November 18, 2005, the undersigned was appointed as fact finder by the State Employment Relations Board ("SERB"). The appointment was made pursuant to Ohio Revised Code Section 4117.14 (C)(3).

Prior to the fact-finding hearing, the parties engaged in six formal negotiation sessions between September 9, 2005, and December 28, 2005. They reached tentative agreements on many issues. The unresolved issues were presented to the fact finder for recommendations.

TENTATIVE AGREEMENTS

The tentative agreements of the parties are hereby incorporated by reference into this report as recommendations. In addition, unless the fact finder has recommended a change in the language of the expired agreement, or the parties have tentatively agreed to a change, the fact finder recommends that the language of the expired agreement be retained.

STATUTORY CRITERIA

The following findings and recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117-9-05 of the Ohio Administrative Code:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

ARTICLE 7 - WAGES

Position of the City

The City asserts that, even with a wage freeze, it faces a budget deficit of 1.1 million dollars in 2006. This is the first year that the City has faced a deficient situation. The City anticipates that tax revenues will not increase significantly in 2006. However, the cost of health insurance and workers' compensation will increase substantially.

Therefore, the City asserts that it can ill afford any pay increases for 2006. It states that it has no plans to approve pay raises for any City employees during 2006.

The City contends that, in order to properly compare wages of other police departments, adjustments must be made for employer contributions toward the employees' share of pension contributions. With no contributions from an employer, the employees' share is 10 percent of wages. In Zanesville, the City pays 8.5 percent of the employees' share, while the employees pay only 1.5 percent.

The City has provided data from comparable from cities in the contiguous counties, and from Lancaster, in Fairfield County. The data presented show the actual 2005 wage, and the wage reduced by pension contributions of the employees. The selected cities are Cambridge, Heath, Lancaster and Newark. In Cambridge and Heath, the employer makes no contribution toward the employees' share. In Lancaster, the city pays 2.5 percent. In Newark, the employer pays the entire 10 percent.

The 2005 average wage for top level officers in the four cities (reduced by employee pension payments) is \$39,722. This compares with a 2005 wage of \$41,326 for Zanesville. Thus, the City contends that its current pay rates exceed the average of comparable cities, when the pension contribution is considered.

The City proposes that there be no increase in wage rates for 2006. It proposes a wage increase of 3 percent for 2007, and an additional increase of 4 percent for 2008.

Further, the City proposes a freeze on step increases for 2006. Under the City's proposal, bargaining unit members would move up 2 steps in 2007 to make up for the step missed in 2006.

Position of the FOP

The FOP opposes any freeze on step increases. It contends that the starting wage for police officers of \$27,227 is very low, and newer officers need to be able to quickly progress to higher pay rates.

It proposes two alternatives for wage rate increases. One alternative is no increase for 2006, a 5 percent wage increase in 2007, and an additional 5 percent in 2008. Under the second alternative, bargaining unit members would receive wage increases of 3 percent for 2006, 3 percent for 2007, and 4 percent for 2008.

The FOP has presented SERB data from 47 cities with populations between 18,000 and 32,000. The population in Zanesville is 25,600. The FOP focuses on Chillicothe and Athens. Both are southeastern Ohio cities with a population similar to Zanesville. In 2005, the SERB data show that the wage of a top level officer was \$38,126 in Chillicothe, and \$43,180 in Athens. The same report shows a top level wage of \$41,953 in Zanesville.

The FOP asserts that, effective on January 1, 2006, Athens police officers will receive wage increases of 4.25 percent, 3 percent and 3.5 percent. The FOP states that both Lancaster and Chillicothe police officers will receive substantial wage increases in new collective bargaining agreements. In a collective bargaining agreement effective January 1, 2006, Lancaster police officers will receive a \$2000.00 lump sum, and wage increases of 5 percent, 6 percent and 6

percent during the three years of the agreement. In Chillicothe, police officers have a tentative agreement, effective January 1, 2006 which will provide wage increases of 3 percent during each year of the three year agreement. In addition, all Chillicothe police officers are paid \$6600 per year for "hazardous duty" pay.

Discussion

City general income tax revenue has been stagnant during the years 2002 to 2005. In the 1980's voters approved a special income tax of 0.5 percent. All revenue from this tax must go to the Police Department. This tax provides 60 percent of the police budget. The tax revenue received in each of the last four years, rounded to the nearest thousand, is as follows:

Year	City General Income Tax	Police Income Tax
2002	\$12,179,000.	\$3,582,000
2003	\$11,621,000	\$3,418,000
2004	\$11,222,000	\$3,447,000
2005	\$12,205,000	\$3,590,000

The above data show that 2005 income tax revenues were only 0.2 percent more than 2002 revenues. While revenue has been flat from 2002 to 2005, police wages have increased by 12 percent. Health insurance cost has risen from a annual cost per employee of \$9,254 in 2002 to \$12,344 in 2005, an increase of 33 percent. The City projects that its contributions to the Bureau of Workers' Compensation will increase to \$738,400 from \$332,735 in 2006, an increase of \$405,000.

To pay for the increases in wage and insurance costs, the City has reduced spending in other areas. It has increased sanitary sewer rates by \$220,000 per year, and has made non-personnel reductions of \$225,000. It transferred \$227,000 to the General Fund by liquidating the City's "rainy day fund." In addition, the City has reduced subsidies by \$165,000 per year.

Section 7.2 of the current collective bargaining agreement is titled: "Automatic Pay Increases." Currently, new officers start in Step B. Each January, police officers move to a higher step, until they reach the top step, which is Step F. The section sets forth the schedule of step increases:

Step B - \$27,227.20
Step C - \$29,744.00
Step D - \$32,998.80
Step E - \$34,694.40
Step F - \$41,953.60

The schedule shows that employees receive substantial pay increases as they move through the steps. The purpose of step increases is to compensate police officers as they become more valuable to the City through additional work experience. Most employees base their budgets on the assumption that they will receive scheduled step increases.

In contrast to step increases, it is a well known fact that annual wage increases will vary depending upon various factors, such as the increase in the cost of living, comparative wages, and the financial health of the employer. Thus, employees are aware that wage increases are subject to change from contract to contract. Rather than denying step increases to employees, the fact finder feels that it is better to respond to changing economic conditions by making adjustments in the amount of wage increases.

In the current collective bargaining agreement, wages of police officers increased by 4 percent per year, for a total of 12 percent. During that time, the total inflation rate was about 8 percent. Thus, during the last collective bargaining agreement, wage increases to bargaining unit members significantly exceeded the increase in the cost of living.

The fact finder observes that wages continued to increase during the term of the current collective bargaining agreement. During the same period, the City had no increase in revenue available to pay wages.

The City has established that its financial situation has deteriorated over the last four years. Expenses have continued to increase, while income tax revenues, the major source of funds available to pay to police officers, have not increased. Expenses such as workers' compensation and health insurance have increased dramatically.

The City is not contending that police officers are undeserving of a wage increase in 2006. Its proposals are based on the City's financial condition. The City has already taken steps to reduce spending in order to fund wage increases in 2007 and 2008. The City is willing to commit to wage increases for 2007 and 2008. The FOP is willing to accept a wage freeze for 2006, provided that there be no freeze on step increases, and that police officers receive a significant wage increase in 2007 and 2008.

At this time, a new shopping mall is under construction in the City. A Home Depot, TJ Maxx, and Kohls will begin construction in 2006. The City anticipates that revenues will be increased in 2006 due to taxes on the wages of construction workers. Later, revenues will increase due to taxes on the wages of employees at the stores.

The fact finder has reviewed the data from comparable jurisdictions selected by the parties. The data shows that the 2005 wages of Zanesville police officers are in the same range as the comparable cities. Overall, the data shows that Zanesville police officers are neither markedly overpaid nor markedly underpaid compared with similar cities. However, wages must continue to increase in order to remain competitive with other jurisdictions.

Recommendation

Employees have a reasonable expectation that they will receive step increases as provided in the collective bargaining agreement. Step increases, unlike overall wage increases, are based on an accomplishment by the employee, i.e. more work experience. The additional cost will be relatively small as few police officers have less than five years of service. The fact finder recommends that there be no freeze on step increases in 2006.

Given the current financial condition of the City, a wage increase in 2006 would require the City to impose additional cuts in services provided to the residents. At this time, the City has not agreed to 2006 wage increases for any other City employees. The City states that it has no intention of approving a wage increase for any employee in 2006.

Even though the police officers are deserving of a pay raise in 2006, the financial condition of the City makes it unwise to increase wages in 2006. Therefore, the fact finder recommends a wage freeze for 2006. The recommendation is based primarily on the City's financial condition, rather than on a comparison of wages in comparable cities.

In determining wage increases for 2007 and 2008, the police officers must be compensated considering the fact that the police officers will have no increase in 2006. The fact finder therefore recommends that wages increase by five (5) percent in 2007, and by four (4)

percent in 2008. By providing a total wage increase of 9 percent over 3 years, the police officers should be able to keep pace with increases in the cost of living.

ARTICLE 7 - ON-CALL PAY

Position of the FOP

An on-call officer is required to be ready and able to report for work on short notice during the on-call period. Currently, officers called in while they are in on-call status are paid double-time. If an officer is not called in, he or she receives no compensation for being on call.

The FOP asserts that officers should be compensated for the inconvenience and restrictions which on-call status requires. The FOP proposes that police officers who are required to be on-call, but are not called in, be credited with two hours of compensatory time per pay period. The compensatory time would be credited during any pay period in which an officer is on-call, but is not called in to work.

Position of the City

The City opposes the proposal of the FOP. It argues that the City agreed to the double time to make up for the inconvenience to the officers. In prior negotiations, the FOP chose the double-time provision over compensatory time. The City notes that, although compensatory time does not require an immediate payout of cash, compensatory time does result in additional cost to the City.

Discussion

Five detectives and one supervisor are required to be on-call. Two detectives are on call for a week at a time. The others are on-call up to 3 days in a pay period. When an employee is

on-call, he or she must remain in the county, and be able to respond in a reasonable amount of time. No alcoholic beverages can be consumed while on-call.

The restrictions limit the activities that an officer can engage in. Officers cannot participate in family activities if they are taking place out of the county. They cannot attend out of town events. They cannot leave the county to visit friends or conduct personal business.

Due to the significant restrictions that being on-call requires, it seems reasonable to provide some compensation to officers who are required to be on-call. Certainly, the payment of double-time provides some compensation. However, to be paid double-time, it is necessary that an officer actually be called in. In recognition of this fact, the FOP proposal provides that an on-call employee who is called in on double-time during a pay period will not receive compensatory time for that pay period.

Time spent on-call is in addition to an employee's regular work hours. Most employees are free to do as they please once their working time is completed. The restrictions on officers on-call are significant enough that the officers deserve some compensation for the inconvenience. The FOP proposal is a reasonable approach to provide this compensation. The fact finder therefore recommends the adoption of the FOP proposal for Section 7.6.

ARTICLE 8 - VACATION

Position of the FOP

The FOP proposes that Section 8.1(A) be modified to provide that employees with more than 22 years of service receive an additional .46 hours of vacation per pay period. This proposal will result in an additional vacation of 1.5 days per year, for a total of 6.5 weeks of vacation for

the affected employees. The FOP asserts that this proposal will bring Zanesville into line with the vacation schedules in Athens and Chillicothe.

The FOP also proposes that Section 8.1 (H) be modified to increase the number of holidays from 6 to 10. The FOP proposes 4 additional holidays: Martin Luther King's Birthday, Presidents' Day, Labor Day, and Columbus Day.

The FOP points out that Athens police officers have 10 holidays plus the employee's birthday, for a total of 11. The FOP notes that Chillicothe officers have 15 holidays per year, including Elvis Presley's Birthday.

Position of the City

The City has agreed to give the FOP either the additional vacation accrual or 2 additional holidays. Its proposal to the fact finder is to add Martin Luther King's Birthday and Labor Day. The City asserts that, with the 2 additional holidays, the police officers will have vacation/holiday compensation which is in line with other City employees. With the addition of two holidays, the total current combined time off for vacation (at the highest level) and holidays for City employees is as follows:

Police Officers	272
AFSCME	281
Unaffiliated	271

The City points out that police officers in Zanesville receive more vacation than officers in Cambridge, Heath, Lancaster and Newark. At the top level of vacation accrual, police officers in these cities receive 200 hours, except for Newark, where they receive 240 hours of vacation.

Discussion

It is important to note that, in the bargaining unit, compensation for holidays is included in the vacation schedule. Forty-eight hours are added to the vacation schedule to compensate employees for holidays.

Currently, employees with 18 or more years of service receive a total of 260 hours of vacation per year. However, if compensation for holidays was separate, the amount of vacation would be reduced by 48 hours (6 holidays x 8 hours= 48 hours) to 212 hours per year.

The current agreement provides that employees who work on a designated holiday receive 1.5 times their normal rate of pay. Prior to the current agreement, employees did not receive any additional pay for working on a holiday. Neither of the proposals for additional holidays would provide additional time off, i.e., no additional time would be added to the vacation schedule. Instead, police officers would benefit by being paid at the time and one-half rate for work on the additional holidays.

The current top level vacation entitlement is 6.2 weeks per year. However, if holiday compensation is pulled out, the amount of vacation is 5 weeks.

In Athens, officers with 18 years of service receive 5 weeks of vacation, and officers with 25 years of service have 6 weeks of vacation. In Chillicothe, officers with 20 or more years of service currently have 7 weeks of vacation. However, officers hired in 2003 or later will have 5 weeks of vacation at 20 years. Three of the four comparable cities chosen by the City have 5 weeks of vacation.

Recommendation

With the FOP vacation proposal, the vacation rate after 22 years would be 6.5 weeks per year. However, the vacation time is 5.3 weeks if holidays are excluded. To make a true

comparison other cities, the holiday time must be excluded. The evidence shows that the amount of vacation for police officers in Zanesville is comparable to other jurisdictions. The FOP proposal for additional vacation entitlement must be rejected. The fact finder recommends current language for Section 8.1 (A).

The current agreement gives employees 6 holidays per year. The holidays are: New Year's Day, Memorial Day, Independence Day, Veterans' Day, Thanksgiving Day, and Christmas Day. Currently, the number of holidays is low in comparison with similar cities.

The number of holidays should be increased. However, the FOP proposal to add 4 holidays to the current 6 holidays represents a 66.7 percent increase in the number of holidays. This is too drastic. The fact finder believes that the City's proposal to add Martin Luther King's Birthday and Labor Day is the more reasonable proposal. The fact finder thus recommends the adoption of the City proposal for Section 8.1 (H).

ARTICLE 9 - INSURANCE SCHEDULE

The parties have already agreed to several of the disputed health insurance issues. The issues are: an increase in employee contributions to premiums beginning in 2007, a change in the co-pay for prescriptions, and a change in the grievance procedure. The remaining issues are a City proposal to change the eligibility requirement for spouses of employees, and an FOP proposal to reduce the amount of deductibles. These issues are discussed below.

Section 9.1 (B)

Position of the City

The City proposes to add Section 9.1 (B) to the agreement. This proposal provides that, if an employee's spouse is eligible for health insurance through his or her own employer, the City's health plan cannot be the spouse's primary provider. The proposal allows employees to name the City's plan as the secondary insurer for the spouse. The provision would not apply if the spouse makes less than twice the federal minimum wage, works fewer than 25 hours per week, or has to pay more than \$100.00 per month for single coverage.

The City explains that, because the cost to the officers is so low, an inordinate number of spouses receive primary coverage from the City. Because the City is self-insured, the large number of spouses who are insured increases the City's cost for insurance. The City maintains that the adoption of the provision would slow the increase in health insurance costs.

The City's proposal requires employees to certify the availability of insurance for their spouses. If an employee does not provide proper certification, the City has the right to remove the spouse from the City's health plan.

Position of the FOP

The FOP opposes the City's proposal to change the eligibility rules for insurance coverage of spouses of employees. It asserts that it is unfair to require employees with working spouses be treated differently than employees with non-working spouses. The FOP argues that the City's proposal may cost employees to spend an additional \$1200 or more per year for health insurance for the family.

Discussion

The City's proposal to change insurance eligibility for spouses of employees is unusual. It would probably save money for the City. However, administering the provision would be unwieldily. Verification of the insurance of spouses could be problematic. The fact finder believes that this proposal has the potential to give rise to many future grievances.

Recommendation

No other City employees have this eligibility requirement. Thus, there is no way to know how the plan would operate. Considering the many details necessary to carry out the proposal, the fact finder believes that this is an issue that should be negotiated by the parties. Therefore, the fact finder will recommend that the City's proposal not be included in the new collective bargaining agreement. The current language in Section 9.1 should remain in place.

Section 9.2 (A)

Position of the FOP

The FOP proposes that the deductibles be increased from the current 150/350 to 100/300. The FOP points out that the firefighters have the 100/300 deductibles, and unaffiliated employees have deductibles of 100/200. It asserts that it is unfair to have lower deductibles for some employee groups.

Position of the City

The City opposes the FOP proposal to reduce the deductibles. The City points out that all but two of the employee groups in the City have the same deductible as provided in the current agreement. The deductibles for the firefighters were imposed on the City in a conciliation award.

The unaffiliated employees have 100/200 deductibles, but the City plans to increase them to 150/350.

Discussion

There are currently two employee groups which have lower deductibles. Since the deductibles for the firefighters were awarded by a conciliator, this is not a provision agreed to by the City. The firefighters' collective bargaining agreement may have other provisions awarded in conciliation which are less favorable, and may counter the award for insurance deductibles.

The City is acting to increase the deductibles of unaffiliated employees to the same 150/350 level as the police officers currently have. They were 50/100, and were doubled to 100/200. The City is raising them gradually to allow employees to financially adjust.

The FOP's argument is based on the lack of uniformity among employee groups. The City has provided reasonable explanations of the reasons for the fact that two employee groups have lower deductibles. The fact finder is convinced that the City is not discriminating against the FOP bargaining unit. Therefore, the fact finder recommends current language for Section 9.2 (A).

The above recommendations are respectfully submitted to the parties for their consideration,



Charles W. Kohler, Fact Finder

CERTIFICATE OF SERVICE

I do hereby certify that on this February 8, 2006, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Frank L. Arnold, Staff Representative, Fraternal Order of Police, Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215; and upon Dale Raines, Budget and Finance Director, City of Zanesville , 401 Market Street, Zanesville , Ohio 43701 each by Federal Express overnight delivery; and upon Craig R. Mayton, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.



Charles W. Kohler, Fact Finder